



IFW/1654
Dae

PATENT
0230-0161P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Kenji ASANO et al. Conf.: 3333
Appl. No.: 09/856,718 Group: 1654
Filed: January 28, 2002 Examiner: S. Coe
For: LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF
LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-ENHANCING
FORMULATIONS CONTAINING THE EXTRACT

RENEWED PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

October 18, 2004
(Monday)

Sir:

Pursuant to the Decision on the Petition issued on August 17, 2004, attached hereto is Petition Under 37 §1.47(a), wherein acceptance of the Declaration and Power of Attorney without the signature of Inventor TAJIMA is requested.

As detailed in the Petition and the evidence attached thereto, Mr. TAJIMA considers himself to be an inventor of the subject matter of the present application, but has refused to execute the Declaration and Power of Attorney.

The Decision on Petition mailed on August 17, 2004, indicates that requirement (2) of the Petition, i.e. proof that the inventor refuses to sign had not been satisfied. The Decision stated that the Petition was inadequate because

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inventor TAJIMA had not been sent the Declaration & Power of Attorney with the complete specification and there was no express statement that Mr. TAJIMA did not want to receive the application papers.

These issues have been addressed in the attached Petition, wherein it is shown that Mr. TAJIMA has now been sent the Declaration & Power of Attorney with the complete specification and that he expressly refused to execute the Declaration & Power of Attorney.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Gerald M. Murphy, Jr., #28,977

MaryAnne Armstrong, PhD, 40,069

GMM/MAA/
0230-0161P
Attachments: Petition

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000



PATENT
0230-0161P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Kenji ASANO et al. Conf.: 3333
Appl. No.: 09/856,718 Group: 1564
Filed: January 28, 2002 Examiner: S. Coe
For: LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF
LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-ENHANCING
FORMULATIONS CONTAINING THE SAME

PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

October 18, 2004
(Monday)

Sir:

1. This petition is to declare that the non-signing inventor refuses to sign the oath or declaration after having been presented with the same.

Attached hereto is an affidavit of Dr. Hiroko EJIRI, of the Japanese law firm YUASA & HARA. Dr. EJIRI states that inventor Yutaka TAJIMA was sent the Declaration & Power of Attorney, and a copy of the complete specification, including the claims on September 27, 2004. In a telephone conversation that took place on September 30, 2004, Mr. TAJIMA informed Dr. Ejiri that he would not execute the Declaration & Power of Attorney and that he would not accept the documents from the post office. Mr. TAJIMA apparently also advised the post office that he would not

accept the containing the Declaration & Power of Attorney and specification. After an appropriate amount of time passed the post office returned all of the documents to the offices of YUASA & HARA for failure of Mr. TAJIMA to accept delivery. Thus, inventor TAJIMA has been presented with the Declaration & Power of Attorney with the complete specification and has explicitly refused to execution the Declaration & Power of Attorney.

2. Attached hereto as an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116.

3. Fee Payment (37 C.F.R. § 1.17(i))

☒ The surcharge fee in the amount of \$130.00 was paid on May 25, 2001. As noted on the Decision mailed on August 17, 2004, no additional fee is needed.

4. Statement of non-signing inventor's last known address:

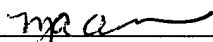
Yutaka TAJIMA
10-511, Yaemizo 3-chome
Saga-shi, Saga 849-0935 JAPAN

Appl. No. 09/856,718

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Gerald M. Murphy, Jr., #28,977

MaryAnne Armstrong, PhD #40,069

GMM/MAA/
0230-0161P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachments: Declaration of Dr. Hiroko EJIRI with accompanying Exhibits 1-3
Declaration and Power of Attorney



Application No. 09/856,718

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: ASANO, Kenji et al. Conf.: 3333
Int'l. Appl. No.: PCT/JP99/06616,
Appl. No.: 09/856,718 Group: 1654
Filed: May 25, 2001 Examiner: Bryan Tung
For: LAK ACTIVITY ENHANCERS DERIVED FROM
EXTRACT OF LENTINUS EDODES MYCELIUM AND
LAK ACTIVITY-ENHANCING FORMULATIONS
CONTAINING THE EXTRACT

AFFIDAVIT

I, Hiroko Ejiri, do so solemnly swear that a Declaration and Power of Attorney in connection with Application No. 09/856,718, filed in the U.S. Patent and Trademark Office on May 25, 2001, a copy of the complete specification and claims and a copy of the corresponding WO00/32212 were presented to Yutaka Tajima, one of the inventors of the above-identified application by mailing the documents to his last known address on September 27, 2004. A copy of the letter, which accompanied the documents, and the envelope attached hereto as Exhibit 1. An English translation of the letter is attached hereto as Exhibit 2. We requested the Post Office of the Japanese Postal Service to issue a certificate of delivery of mail confirming that Yutaka TAJIMA actually received the letter. Yutaka TAJIMA gave me a phone call on September 30, 2004. In the phone call he told me that he noted the documents reached the Hongo Post Office, who was holding the documents until he appeared, but that he would like to refuse to receive the documents without taking any action before the Post Office. He also telephoned the Post Office to this effect, we heard.

Then, the Post Office could not send the documents back to us without receiving the Tajima's signature until the prescribed keeping term expired. The whole letter including a Declaration and Power of Attorney, a copy of the complete specification and claims, and a copy of the corresponding WO00/32212 were returned with the envelope we sent with some slips of paper which the Hongo Post Office attached to prove that Mr. Yutaka TAJIMA refused to receive. I received them on October 8, 2004.(Exhibit 3)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 8th day of October 2004.

A handwritten signature in black ink, appearing to read 'Hiroko Ejiri', is written over a horizontal line.

Hiroko Ejiri



Express

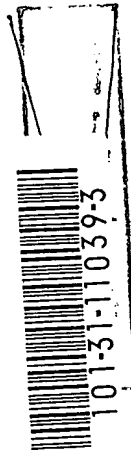
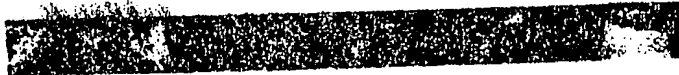
Exhibit 1

849-0935

佐賀県佐賀市八戸溝 3 丁目 10 番 511 号

田 島 裕 様

To Mr. Yutaka TAJIMA
10-511 Yaemizo 3-chome
Saga-shi, Saga 849-0935



Registered

Required certificate of delivery

(Translation)

Mr. Yutaka Tajima

Norihiro FUKAZAWA, Patent Attorney
Hiroko EJIRI, Patent Attorney
YUASA AND HARA
New Ohtemachi Bldg. 206
2-1, Ohtemachi 2-chome
Chiyoda-ku, Tokyo 100-0004
Tel: (03)3270-6641
Fax: (03)3246-0233

Re: U.S. Patent Appln. Ser. No. 09/856,718
"LAK ACTIVITY ENHANCERSA DERIVED FROM EXTRACT
OF LENTINUS EDODES MYCELIUM AND LAK ACTIVITY
ACTIVITY-ENHANCING FORMULATIONS CONTAININ THE
EXTRACT"
Our File: PC/K(X)-17-20US

Dear Mr. Tajima:

The above-identified U.S. patent application is still pending without completing your signature on the Declaration and Power of Attorney. We have just received an Office Action of August 17, 2004 refusing the documents already submitted to the U.S. PTO in this regard.

The Examiner pointed out the incompleteness of formalities in this application because of absence of your signature on the Declaration and Power of Attorney. We, therefore, send you a package including a Declaration and Power of Attorney, a complete copy of the specification and claims, and a copy of the corresponding PCT application.

We would ask you to execute the enclosed Declaration and

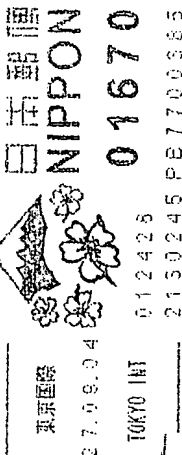
Power of Attorney and return the documents to Dr. H. Ejiri, YUASA & HARA, with the envelope also enclosed with her address stamped.

The due date to respond to the outstanding Office Action expired on October 17, 2004. Please return the documents by October 9, 2004 at the latest.

If, however, you refuse to sign the Declaration, please let us know and return the documents as they are.

Yours very truly,

Documents Enclosed: Specification and Claims
Declaration and Power of Attorney
PCT Application Document
Return-mail Envelope



速達

9/30 Tel.

★メッセージ

受取拒否

差出人さんにも連絡済たそう

Telephoned on September 30, 2004

The addressee refuses to receive. He also noticed the sender to this effect.

Post Office

Notice of Keeping the Documents
郵便物お預かりのお知らせ
(郵便局控)

お知らせ番号

06-5742

受取人様

湯之田島 裕

様

Addressee: Mr. Yutaka Tajima

差出人様 ユーサハラ様から

Sender: YUASA & HARA

配達日時 9月29日 18時33分頃

保管期限 10月6日まで

配達担当者



お預かりしている郵便物

手紙

- ☐ 書留(現金)
☐ 書留(その他)
☐ 配達記録
☒ 特別送達・配達証明
☐ 上記以外

小包

- ☐ 生もの
☐ チルド
☐ 上記以外

備考

原達

Registered and Express Mail
To be kept until October 6, 2004

(簡)

100
〒 - 0000

お受取人さま御不在のため通知を
いたしました。が、期限までに受領さ
れませんでした。お返しいたしま
す。

本 1
郷 1
郵便局 8
7
9
9

On October 7, 2004

Returned herewith because
of the Addressee's refusal
of receipt

113-8799

Hongo Post Office

September 29, 2004 18:33
Person in charge (Seal)

BIRCH, STEWART, KOLASCH & BIRCH, LLP

COMBINED DECLARATION AND POWER OF ATTORNEY

ATTORNEY DOCKET NO.

0230-0161P

PLEASE NOTE:
YOU MUST
COMPLETE THE
FOLLOWING:

FOR PATENT AND DESIGN APPLICATIONS

As a below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated next to my name; that I verily believe that I am the original, first and sole inventor (if only one inventor is named below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

LAK ACTIVITY ENHANCERS DERIVED FROM EXTRACT OF LENTINUS EDODES MYCELIUM AND LAK ACTIVITY-ENHANCING FORMULATIONS CONTAINING THE EXTRACT

Insert Title:

Fill in Appropriate
Information -
For Use Without
Specification
Attached:

the specification of which is attached hereto. If not attached hereto,

the specification was filed on _____ as
United States Application Number _____; and /or

the specification was filed on November 26, 1999 as PCT
International Application Number PCT/JP99/06616; and was
amended under PCT Article 19 on _____ (if applicable)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (six months for designs) prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 (a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Insert Priority
Information:
(if appropriate)

Prior Foreign Application(s)

(Number)	(Country)	(Month/Day/Year Filed)	Priority Claimed
<u>353927/1998</u>	<u>Japan</u>	<u>11/27/98</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>353928/1998</u>	<u>Japan</u>	<u>11/27/98</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
_____(Number)_____	_____(Country)_____	_____(Month/Day/Year Filed)_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____(Number)_____	_____(Country)_____	_____(Month/Day/Year Filed)_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____(Number)_____	_____(Country)_____	_____(Month/Day/Year Filed)_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

Insert Provisional
Application(s):
(if any)

(Application Number)	(Filing Date)
_____(Application Number)_____	_____(Filing Date)_____

All Foreign Applications, if any, for any Patent or Inventor's Certificate Filed More Than 12 Months (6 Months for Designs) Prior To The Filing Date of This Application:

Insert Requested
Information:
(if appropriate)

Country	Application No.	Date of Filing (Month/Day/Year)
_____(Country)_____	_____(Application No.)_____	_____(Date of Filing)_____

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Insert Prior U.S.
Application(s):
(if any)

(Application Number)	(Filing Date)	(Status - patented, pending, abandoned)
_____(Application Number)_____	_____(Filing Date)_____	_____(Status)_____

I hereby appoint the following attorneys to prosecute this application and/or an international application based on this application and to transact all business in the Patent and Trademark Office connected therewith and in connection with the resulting patent based on instructions received from the entity who first sent the application papers to the attorneys identified below, unless the inventor(s) or assignee provides said attorneys with a written notice to the contrary:

Terrell C. Birch	(Reg. No. 19,382)	Raymond C. Stewart	(Reg. No. 21,066)
Joseph A. Kolasch	(Reg. No. 22,463)	James M. Slattery	(Reg. No. 28,380)
Bernard L. Sweeney	(Reg. No. 24,448)	Michael K. Mutter	(Reg. No. 29,680)
Charles Gorenstein	(Reg. No. 29,271)	Gerald M. Murphy, Jr.	(Reg. No. 28,977)
Leonard R. Svensson	(Reg. No. 30,330)	Terry L. Clark	(Reg. No. 32,644)
Andrew D. Meikle	(Reg. No. 32,868)	Marc S. Weiner	(Reg. No. 32,181)
Joe McKinney Muncy	(Reg. No. 32,334)	Andrew F. Reish	(Reg. No. 33,443)
C. Joseph Faraci	(Reg. No. 32,350)	Donald J. Daley	(Reg. No. 34,313)

Send Correspondence to: **BIRCH, STEWART, KOLASCH & BIRCH, LLP**

P.O. Box 747 • Falls Church, Virginia 22040-0747

Telephone: (703) 205-8000 • Facsimile: (703) 205-8050

PLEASE NOTE:
YOU MUST
COMPLETE THE
FOLLOWING:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First or Sole
Inventor:
Insert Name of Inventor
Insert Date This
Document is Signed

Insert Residence
Insert Citizenship

Insert Post Office
Address

Full Name of Second
Inventor, if any:

see above

Full Name of Third
Inventor, if any

see above

Full Name of Fourth
Inventor, if any

see above

Full Name of Fifth
Inventor, if any

see above

GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Kenji	ASANO	<i>Kenji Asano</i>	May 30, 2001
Residence (City, State & Country)		CITIZENSHIP	
Osaka, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
c/o Kobayashi Pharmaceutical Co., Ltd. of 3-13-35, Mitsuya Minami, Yodogawa-ku, Osaka-shi, Osaka 532-0035 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Yukiko	MATSUDA	<i>Yukiko Matsuda</i>	May 30, 2001
Residence (City, State & Country)		CITIZENSHIP	
Osaka, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
c/o Kobayashi Pharmaceutical Co., Ltd. of 3-13-35, Mitsuya Minami, Yodogawa-ku, Osaka-shi, Osaka 532-0035 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Yutaka	TAJIMA		
Residence (City, State & Country)		CITIZENSHIP	
Saga, Japan		Japanese	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
10-511, Yaemizo 3-chome, Saga-shi, Saga 849-0935 Japan			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)		CITIZENSHIP	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			
GIVEN NAME	FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)		CITIZENSHIP	
POST OFFICE ADDRESS (Complete Street Address including City, State & Country)			

* DATE OF SIGNATURE

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